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Attorneys for Defendants

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SARAH PERSONETTE, JAMES SULLIVAN,
and DALANA BRAND,

Plaintiffs,
vs.

ELON MUSK, ET AL.,

Defendants.

Case No. 3:24-cv-6266-JCS

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS' MOTION
TO DISMISS THE COMPLAINT'S
SECOND CAUSE OF ACTION**

Hearing Date: January 16, 2025

Time: 10:00 a.m.

Location: Courtroom 8

Hon. Jacqueline Scott Corley

Complaint Filed: September 5, 2024

1 Defendants Elon Musk; X Corp.; and the Twitter, Inc. Change of Control and Involuntary
 2 Termination Protection Policy (collectively, “Defendants”) respectfully request that the Court take
 3 judicial notice of the following documents attached as Exhibits 1 and 2 to the concurrently filed
 4 Declaration of Abbey M. Glenn (“Glenn Decl.”) in support of Defendants’ Motion to Dismiss the
 5 Complaint’s Second Cause of Action:

6 **Exhibit 1:** The year-end 2021 Form 10-K filed with the Securities and Exchange
 7 Commission (“SEC”) by Twitter, Inc., dated February 16, 2022.

8 **Exhibit 2:** The 2022 Definitive Proxy Statement filed with the SEC by Twitter, Inc., dated
 9 May 25, 2022.

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 11 Federal Rule of Evidence 201 allows a court to take judicial notice of facts that are “not
 12 subject to reasonable dispute” and “can be accurately and readily determined from sources whose
 13 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Similarly, in ruling on motions
 14 brought pursuant to Federal Rule of Civil Procedure 12, courts regularly consider documents that
 15 are “incorporate[ed] by reference” into a complaint. *See, e.g., Knievel v. ESPN*, 393 F.3d 1068,
 16 1076 (9th Cir. 2005). Here, Defendants’ proffered documents warrant judicial notice.

17 Exhibits 1 and 2 are properly subject to judicial notice as documents filed with a federal
 18 agency, the SEC, and which are publicly available. *E.g., Dreiling v. American Exp. Co.*, 458 F.3d
 19 942, 946 n.2 (9th Cir. 2006) (court “may consider documents referred to in the complaint or any
 20 matter subject to judicial notice, such as SEC filings”). Plaintiffs cite and rely on Exhibit 2 in their
 21 Complaint, directly quoting it. Compl. ¶¶ 129-32. Thus, the Court may properly take judicial
 22 notice of these SEC filings. *See, e.g., Shenwick v. Twitter, Inc.*, 282 F. Supp. 3d 1115, 1123 (N.D.
 23 Cal. 2017) (taking judicial notice of SEC filings); *City of Royal Oak Retirement Sys. v. Juniper
 24 Networks, Inc.*, 880 F. Supp. 2d 1045, 1059 (N.D. Cal. 2012) (taking judicial notice of SEC filings
 25 and acknowledging that “when a complaint references and necessarily relies on a document, the
 26 court ‘may assume that its contents are true for purposes of a motion to dismiss under Rule
 27 12(b)(6).’”) (quoting *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)).

28 For these reasons, Defendants respectfully request that the Court take judicial notice of

1 Exhibits 1 and 2.

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3 Dated: November 15, 2024

Respectfully submitted,

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5 MORGAN, LEWIS & BOCKIUS LLP

6 By /s/ Christopher Boran

7 Eric Meckley

8 Jeremy Blumenfeld (admitted *pro hac vice*)

9 Christopher Boran (admitted *pro hac vice*)

10 Abbey Glenn

11 Brian Sullivan (admitted *pro hac vice*)

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13 *Attorneys for Defendants*

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